88-1097 (1)

Supreme Court, U.S.
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No. 88-_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

On Appeal From The Court of Appeals For The First Supreme Judicial District Houston, Texas

Jurisdictional Statement

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December 22, 1988

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QUESTIONS PRESENTED

1. Whether the validity of the Texas Mandatory Seat Belt Use Law (Chapter 804, Laws of the 69th Legislature of Texas, Regular Session - 1985, hereinafter called the "Act") should be tested by the "strict scrutiny" standard of review that is required when fundamental constitutional rights are involved or by the "rational basis" standard of review that applies when no such rights are asserted.

2. Whether the Act violates the due process clauses of the Fifth and Fourteenth Amendment to the Constitution of the United States.1/

3. Whether the Act violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.2/

1/ The Appellant pleaded in all of the courts below, and expressly pleads in this Court, that the Act violates the due process clauses of both the Fifth and fourteenth Amendments because some cases hold that the rights of a person against the state depend upon the existence of similar rights against Congress. Appellant expressly preserves the point, although he will hereafter refer only to his rights under the Fourteenth Amendment.

2/ There are not any parties to this proceeding other than those stated in the caption of the case in this Court.

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3/ The Court of Criminal Appeals did not issue any orders in this case. The Shock Cover shows the dates on which said Court took action on Appellant's Petition for Discretionary Review and his Motion for Rehearing.

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Jurisdictional Statement

Appellant Raymond Duane Richards, Jr., respectfully appeals from a judgment and opinion of the Court of Appeals for the First Supreme Judicial District of Texas entered in the above proceedings on December 31, 1987. This Jurisdictional Statement is submitted to demonstrate that the Supreme Court has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals are reported at 743 S.W.2d 749. The majority opinion is reproduced in Part I of Appendix A, the dissenting opinion in Part II. The dissenting opinion of Judge Teague of the Texas Court of Criminal Appeals, delivered in connection with that Court's refusal of Appellant's Petition Requesting Discretionary Review, is reported at 757 S.W. 2d 749, and is reproduced in Part I of Appendix B.

GROUNDS OF JURISDICTION

The Appellant was charged and, after a plea of not guilty and after asserting his constitutional rights, was convicted of a violation of the Act in Municipal Court of the City of Southside Place on or about July 17, 1986. TEX. CODE CRIM. PROC. ANN. Art. 44.02 authorized an appeal, and Appellant perfected the same by filing his appeal bond with the Municipal Court Judge on or about July 24, 1986. It was approved by said Judge on July 31, 1986. By virtue of TEX. CODE CRIM. PROC. ANN. Art. 44.17, trial on such appeal was de novo.

Trial on appeal was originally set for August 20, 1986, in Cause No. 906325, in Harris County Criminal Court at Law No. 11 (hereinafter the "Trial Court"), but reset for September 22, 1986, prior to which Appellant filed a written motion to dismiss the complaint on State and Federal constitutional grounds. When such motion was denied, Appellant entered a plea of not guilty to the charge, and filed an affidavit concerning the facts on which such charge was based. The trial court found him guilty of the offense charged, assessing his punishment at a fine of $35. Since the sole issue in the case was the constitutionality of the Act, the Appellant appealed to the Court of Appeals, as authorized by TEX. CODE CRIM. PROC. ANN. Article 4.03.

The judgment of the Court of Appeals, which affirmed the judgment of the trial court, was rendered on December 31, 1987. Appellant's Petition to the Texas Court of Criminal Appeals for Discretionary Review was duly filed in the Court of Appeals on January 29, 1988, in accordance with TEX. R. APP. P. 202(b).

On June 8, 1988, the Texas Court of Criminal Appeals refused Appellant's Petition for Discretionary Review. Appellant's Motion for Rehearing was duly filed June 23, 1988, in accordance with TEX. R. APP. P. 202(l). The Court of Criminal Appeals overruled Appellant's Motion for Rehearing on October 5, 1988. Thus, the judgment appealed from is the judgment of the Court of Appeals entered on December 31, 1987, such Court being the highest court of the State of Texas in which a decision could be had in this case.

On October 24, 1988, Notice of Appeal to this Court was filed in the Court of Appeals. A copy of such Notice was filed in the Trial Court on December 16, 1988, when a portion of the record in the case was found to be still held in such Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2). Section 7 of S.952 enacted on or about June 7, 1988, by the One Hundredth Congress, Second Session, provides that the amendments effected by said S.952 "...shall not affect the right to review or the manner of reviewing the judgment or decree of a court which was entered before such effective date." Since the judgment appealed from was entered on December 31, 1987, this appeal is governed by said § 1257(2), and not by any of the amendments effected by said S.952.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fifth and Fourteenth Amendments to the Constitution of the United States respectively provide in pertinent part as follows:

> "[N]o ... person ... shall ... be deprived of life, liberty, or property, without due process of law ..."
>
> * * * * *
>
> " [N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Act is set forth verbatim in Appendix E.4/

It provides in pertinent part that a person commits an offense, punishable by a fine of at least $25 but not more than $50, if he is 15 years old or more, is riding in the front

4/ Section 1 of the Act amends the Texas Uniform Act Regulating Traffic on Highways (hereinafter, the "Uniform Act") by adding a new Section 107C thereto. Section 2 of the Act further amends the Uniform Act by amending Section 139E thereof. Section 3 of the Act amends Section 22(b) of Art. 6687b, Vernon's Texas Civil Statutes, relating to the suspension of drivers' licenses. Section 4 of the Act specifies the effective dates thereof, and Section 5 contains an emergency clause. Hereafter, references to said Section 107C mean such Section as set forth in Section 1 of the Act.

seat of a passenger car (as defined) while it is being operated on any road, street or highway of Texas, is occupying a seat that is equipped with a seatbelt and is not secured by such belt. These provisions do not apply to postal employees while performing duties that require them to service boxes from their vehicles or require frequent entry into and exit from such vehicles. (See subsections (b) and (h) of Section 107C).

Standard No. 208, entitled "Occupant Crash Protection" (49 CFR § 571.208), promulgated under the National Traffic and Motor Vehicle Safety Act, spawned the adoption of the Act (and others like it in thirty-odd states and the District of Columbia). The pertinent provisions of such Standard are also set forth in Appendix E.

STATEMENT OF THE CASE

Part I. The Constitutional Rights Involved

Liberty

Buried in this $35 misdemeanor case and almost totally disregarded by the courts below are two of the three "most elementary and important rights conceivable ... [that] ... were brought together, and ... publicly announced to Englishmen as Englishmen in the thirty-ninth article of the Great Charter." C. Shattuck: *The True Meaning of the Term "Liberty" in those Clauses in the Federal and State Constitutions which Protect "Life, Liberty, and Property,"* 4 Harv. L. Rev. 365, 374 (1890). Those rights are the right to "life" and the right to "liberty" as such terms are used in the Fourteenth Amendment.

Since these rights have existed for hundreds of years before any of us were born, we rather take them for granted, and tend more to revere other constitutional rights of more recent origin, such as freedom of speech and of the press and religious freedom, which were unknown when King John was forced to sign the Magna Charta. *Id.*, at 379. In the process we lose sight of the fact that liberty is the root of these other freedoms, and, in its broad sense, clearly includes them. *Id.* at 376.

Shattuck understands that "liberty" has a very broad meaning, but makes it very clear that he is focusing his

attention on the narrow meaning of the term as it is used in our American constitutions, which he regards as "historical instruments ... the last stage in a series of changes, the great hallmarks of which are the Magna Charta, the Petition of Rights, the Habeas Corpus Act, and the Bill of Rights." *Id.* at 366. The language of the thirty-ninth article of the Magna Charta (when translated from the Latin, *Id.* at 372) reads as follows:

> "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways destroyed; nor will we pass upon him, nor send upon him, unless by the legal judgment of his peers, or by the law of the land."

"Expressed in more modern phraseology," the rights declared in the original article and "in all its confirmations" are simply "life (including limb and health), personal liberty (using the phrase in its more literal and limited sense to signify freedom of the person or body, *not* all individual rights), and property." *Id.* at 373. "Personal liberty," it is clear, comes from the phrase, "No freeman shall be taken or imprisoned," *Id.* at 373, which was "put first" in the famous thirty-ninth article, according to Lord Coke, "because the liberty of a man's person is more precious to him than everything else that it [sic] is mentioned ..." *Id.* at 374.

Shattuck cites Blackstone's enumeration of the rights protected by the thirty-ninth article as follows: " '[T]he right of personal security' (under which he [Blackstone] includes life, limb, health, and reputation ...), 'the right of personal liberty, and the right of private property ...'" Shattuck quotes Blackstone's definition of personal liberty as follows: "[T]he power of locomotion, of changing situation, of moving one's person to whatever place one's inclination may direct, without imprisonment or restraint, unless by due course of law ...," and explains that, in more abbreviated terms, Blackstone meant by the term "... simply freedom from restraint of the person." *Id.* at 377.

Shattuck further explains that these rights were widely known in the American colonies, before and after the adoption of our state and federal constitutions, and "we find the same classification of rights in the same terms, and in every case the term 'liberty' is explained to mean freedom of the person from restraint." *Id.* at 378. Also see D. Stivison:

Magna Carta in Modern Times, 21 Beverly Hills B. A. J. 199, 200 (1987). Shattuck's conclusion as to the meaning of liberty when used in the U.S. Constitution is confirmed by C. Warren: *The New "Liberty" Under the Fourteenth Amendment*, 39 Harv. L. Rev. 431, 440 (1926), who carefully analyzed all of the cases decided after our Bill of Rights was adopted in 1789 up to the adoption of the Fourteenth Amendment in 1868, and found that the term then still meant only "freedom from physical restraint of the person." He notes, however, that *Allgeyer v. Louisiana*, 165 U.S. 578 (1897), was only the first of many cases which thereafter expanded the constitutional meaning of liberty -- hence, the title of his essay. It is most significant to note in this connection that, while this Court has from time to time *expanded* the meaning of "liberty" in the constitutional sense, the Court has *never diminished its original meaning*.

This Court has repeatedly confirmed that liberty means "freedom from bodily restraint ..." See *Allgeyer*, supra, at 589; *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); and E. Schopler: *Supreme Court's Views as to Concept of "Liberty" under Due Process Clauses of Fifth and Fourteenth Amendments*, 47 L. Ed. 2d 975, 982 (1977).

Life

Although Shattuck did not, in his award winning essay, focus specific attention on the meaning of "life," as used in the Fourteenth Amendment, he makes it clear that the term includes "limb" and "health" See Shattuck, *supra*, at 373 and 377. In the same manner as Shattuck, Appellant turns to Blackstone for enlightenment, and finds that, in Blackstone's view, "life" includes not only a man's limbs which he defined as "those members which may be useful to him in fight ..." but also "the rest of his person or body ... [which is] ... entitled ... to security from the corporal insults of menaces, assaults, beating and wounding; though such insults amount not to destruction of life or member." 1 W. BLACKSTONE: COMMENTARIES, * 130 and * 134 (W. Lewis, Ed., 1897).

This Court has also confirmed that "life" is a fundamental constitutional right, and has essentially the same meaning as Blackstone believed it did. See *Munn v. People of Illinois*, 94 U.S. 113, 142 (1877, Fields dissenting); and *Ingraham v. Wright*, 430 U.S. 651 (1977), wherein

Justice Powell, speaking for the Court, declared, "Among the historic liberties so protected [from deprivation without due process] was a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." (at p. 673). [*Ingraham* involved the Eighth Amendment, but Justice Powell's statement is based on Blackstone and Shattuck.]

It is appropriate and informative to note an early case which (with several others of the same vintage) was instrumental in establishing a common law rule that is based upon the constitutional right to life. Such rule has since developed into the doctrine of "informed consent" in medical malpractice cases, perhaps propelled by the stature of the author of the opinion, Justice Cordozo. The case is *Schloendorff v. Society of New York Hospital*, 105 N.E. 92, 93 (Ct. of App., 1914), and the rule was stated as follows:

> "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages ..."

[An emergency was recognized as an exception where consent would be implied.] There is no question that the police power of the State can override a mere common law rule; however, in passing on the validity of such action, this Court should be very much aware that the State has usurped the normal right of the individual to determine "what shall be done with his own body."

Privacy

A little more than twenty years ago, a constitutional right of privacy was found in the penumbras of several amendments of the Constitution of the United States. See *Griswold v. Connecticut*, 381 U.S. 479 (1965). This right is also deemed to be fundamental, but it is limited to activities relating to marriage, procreation, contraception, family relationships, and child-rearing and education. See *Roe v. Wade*, 410 U.S. 113 (1973). Accordingly, such right is not applicable to the facts of this case, and is *not* asserted here.

Such right was asserted, however, in two cases challenging other mandatory seatbelt use laws, namely, *Wells v. State*, 495 N.Y.S. 2d 591 (Sup. Ct., 1985); and *People v. Kohrig*, 498 N.E.2d 1158 (Ill. Sup. Ct., 1986); app. dism'd., 94 L. Ed. 2d 126, 107 S.Ct. 1264 (1987). The proposition that liberty means freedom from bodily restraint was not asserted or argued or ever mentioned in either of these cases. Neither was the constitutional right to life mentioned or asserted. Accordingly, they cannot have any precedential significance here.

Part II. The Nature of Seatbelts

Preliminary Statement

The Court of Appeals recognized that "Freedom from bodily restraint arises from the Constitution's protection of liberty. The liberty interest that is protected is not merely from bodily restraint ..." See the third paragraph on page A-2 of its opinion (Part I, App. A). The Court of Appeals also recognized that, "When interests of an individual reach a level of a fundamental or a constitutionally protected right, then the legislation must be strictly scrutinized." See the second sentence of the first paragraph commencing on page A-3 of its opinion. *However*, the Court of Appeals, without refuting, challenging or even commenting on the proposition that seatbelts restrain bodily movement, simply overruled Appellant's "First Point of Error," to the effect that the trial court had failed to apply the required strict standard of review. See the first paragraph on page A-5 of its opinion.

Nothing explains this gross inconsistency other than the Court of Appeals disagreed with the proposition that seatbelts restrain bodily movement, which means that such Court simply did not understand the facts relating to seatbelts and their use. Since this Court will review a state court's findings, "[W]here a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts [citing cases]," it is appropriate to include in this Jurisdictional Statement the facts set forth below. R. STERN, E. GRESSMAN & S. SHAPIRO: SUPREME COURT PRACTICE 185 (6th Ed., 1986). Appellant respectfully requests that this Court take judicial notice of such facts, for they are indisputable and judicial notice of them may be

taken at any stage in the proceedings. FED. R. EVID. 201(f); 1 D. LOUISELL & C. MUELLER, FEDERAL EVIDENCE, Sec. 57, p. 427 et seq. and p. 440 et seq. (1981); and 5 *Am Jur* 2d, Appeal and Error § 739, pp. 31 and 36.

Seatbelts Restrain

In 1967, the Secretary of the Department of Transportation or his delegate,[5/] pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, promulgated Standard No. 208, entitled "Occupant Crash Protection" (hereinafter called the "Standard,"49 CFR § 571.208). As originally adopted, the Standard simply required the installation of seatbelts in all passenger cars. It was later amended to require the future installation of "passive restraints" (meaning air bags or "automatic" seatbelts), and later on amended further to provide that such restrains would not be required if states having two-thirds of the population of the United States adopted mandatory seatbelt use laws which satisfied DOT requirements by a specified date. A copy of the latter provisions of the Standard are included in Appendix E.

We all know from common experience and understanding that seat belts restrain bodily movement. We know that, once we have "buckled up" and thereby strapped ourselves into a car, we have lost -- to a degree that varies from car to car, person to person, and even from time to time, depending upon how we are dressed, who else is in the car with us and exactly what we want to do -- our freedom to move about, to get a map out of the glove compartment, to retrieve a brief case from the back seat, to secure or resecure the seatbelt of a child.[6/] Some ladies find that the belts are most uncomfortable to wear, and relocate the shoulder harness so that it passes under the arm instead of across the

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5/ The Department of Transportation, the Secretary of such Department, his delegate (the Administrator of the National Highway Traffic Safety Administration) and said Administration are substantially interchangeable terms, and all will hereinafter be called the "DOT."

6/ It is an offense under the Act if the driver allows a child of four to fifteen years of age to ride in the front seat of a car without being strapped in. Sec. 107C(c).

chest. Some of us find that the shoulder strap cuts into our neck, or otherwise fits too uncomfortably (after all, one size is expected to fit everyone) and, to relieve the pressure, we activate the "window shade device" which many manufacturers have provided in recognition of the discomfort -- i.e., the *restraint* -- experienced by most of us. Some of us even find it necessary to disengage the belt in order to turn around in our seat and look out the back windows of the car when entering a lane of moving traffic from an underground parking garage (where the slope of the up-ramp and the protecting walls at the top of it prevent effective use of the rear view mirrors).

The Court of Appeals, contrary to Blackstone's view that the protected freedom included "moving one's person to whatever one's inclination may direct, without imprisonment or restraint ..." (Shattuck, *supra*, at 377), seemed to regard these restraints as mere inconveniences that were too trivial to consider seriously. Be that as it may, we all know that seatbelts are designed and intended to restrain bodily movement in the event of an accident. This understanding is expressly confirmed by the definitions in Standard No. 209 promulgated by the DOT, entitled "Seatbelt Assemblies" (49 CFR § 571.209), which specifies the requirements of the seatbelts which manufacturers are required to install), as follows:

> "Seat belt assembly" means any strap, webbing, or similar device designed to secure a person in a motor vehicle in order to mitigate the results of any accident...."
>
> "Pelvic restraint" means a seatbelt assembly or portion thereof intended to restrain movement of the pelvis."
>
> "Upper torso restraint" means a portion of a seatbelt assembly intended to restrain movement of the chest and shoulder regions." (subsec. S3).

In view of these definitions, it is undeniable that seat belts *restrain*, for they are designed to "*secure*" a person in a car, and intended to *restrain* particular parts of the body in the event an accident occurs. Justice Teague, in his dissenting opinion (App. B), is correct when he repeatedly states that the Act requires a person to be "strapped inside" a motor

vehicle. Indeed, strapped in to the point of *imprisonment*, for the immutable laws of physics dictate that the fate of the strapped-in body depends entirely on what happens after the accident to the car in which the body rides. If the car catches fire, or plunges into deep water, the result is disastrous unless the person is lucky enough to remain conscious and cool enough to unbuckle the belt, not necessarily a simple trick if the person is riding in an unfamiliar car.

Seatbelts May Also Injure and Kill

Set forth in Part I of Appendix F are numerous facts concerning seatbelt injuries, most of which came to light after this case was decided by the Court of Appeals and are not a part of the record. Nevertheless, they are important in understanding the issues in this case, and Appellant respectfully requests that this Court also take judicial notice of these facts, for in the aggregate, they indisputably establish that seatbelts are truly a "two-edged sword." It appears that many of the most serious injuries result from the use of lap belts, alone, in the back seat. However, there is no reason to expect lap belts to perform any differently when used in the front seat positions, and lap belts, alone, are mandated for use in the middle front position of all of the newer cars on the road today which have room for three prople, and in all front seat positions of the older cars.

The facts cited clearly demonstrate that seat belts are not the benign safety devices that they are advertised and presumed to be. To the contrary, they can, and do, cause injuries and even deaths. Seatbelts are simply a trade-off: instead of one's head going through the windshield, one suffers internal injuries resulting in paralysis due to the seatbelt he is forced to wear. Circumstances considered, it is clear that seat belts potentially threaten one's life, as well as his limbs and the "rest of his person or body." BLACKSTONE, *supra*, * 134.

Part III. When the Questions Were Raised

Appellant asserted his rights to life and liberty under the Fourteenth Amendment by written motion in the Trial Court, urging that the Act was unconstitutional. Such motion, in which the pertinent constitutional provisions relating to both life and liberty (both Federal and State)

were cited and quoted, was supported by a written Memorandum of Authorities. Appellant argued in the Memorandum that the "strict scrutiny" standard of review should be applied, that the Act violated the due process clause of the Fourteenth Amendment (and correlative provisions of the Texas Constitution) and that the Act violated the equal protection clause of the Fourteenth Amendment (and correlative provisions of the Texas Constitution). The trial judge overruled said motion for the stated reason that he was unwilling to substitute his judgment for the judgment of the Legislature.

Appellant urged three Points of Error in his original Brief in the Court of Appeals that were, respectively, substantially the same as the three questions presented in this appeal. The Court of Appeals overruled all three (Part I, App. A, pp. 5 and 6).

In his original Petition to the Court of Criminal Appeals for Discretionary Review, Appellant urged, among other things, that the Court of Appeals had decided an important question of federal law in conflict with applicable decisions of this Court, namely, the standard of review that should be applied in determining the validity of a state law when a fundamental constitutional right under the U.S. Constitution is involved. Because the numerous reports of injuries and deaths resulting from the use of seatbelts (see Part I, App. F), with only two scattered, equivocal exceptions, were not made until after the case was decided by the Court of Appeals, Appellant argued for the first time in a Supplemental Petition to the Court of Criminal Appeals that his constitutional right to "life" was invaded by the Act. The Court of Criminal Appeals refused Appellant's Petition for Discretionary Review without rendering an opinion. Judge Teague dissented, writing an opinion (App. B). Appellant's Motion for Rehearing by the Court of Criminal Appeals was based entirely on the constitutional right to life. Such Motion was denied, with a notation that Judge Teague "would grant."

It would have been appropriate for the Court of Criminal Appeals to consider Appellant's constitutional right to life because, under Texas law, "[T]he court will always adjudicate whether a statute is constitutional, if it is necessary to the decision of a case, regardless of when or how the question is raised." *Gohlman, Lester & Co., v.*

Whittle, 273 S.W. 808, 812 (Tex. Sup. Ct., 1925). Under the Federal judicial system, constitutional rights "... may be waived by a failure to assert them at the proper time ..., but an effective waiver must ... be of a known right..." *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1975). Here the Appellant had no knowledge of the facts on which his constitutional right to life is based until this case was pending in the Court of Criminal Appeals on a Petition for Discretionary Review. Further, "'[C]ourts will indulge every reasonable presumption against waiver' of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

Part IV. The Standard of Review

This Court long ago delineated, and has since clearly and consistently applied, the principle that, when dealing with fundamental rights under the Constitution (or rights of minorities or certain other "suspect" classifications) no state can constitutionally legislate or regulate in the absence of a "compelling state interest." This principle is sometimes called the "strict scrutiny" test, and its full meaning is explained in *Dunn v. Blumstein*, 405 U.S. 330 (1972), as follows (omitting citations):

> In sum, durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are '*necessary* to promote a *compelling* governmental interest.' Thus phrased, the constitutional question may sound like a mathematical formula. But legal 'tests' do not have precision of mathematical formulas. The key words emphasize a matter of degree: that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purposes.
>
> It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with "precision," and must be "tailored" to serve

> their legitimate objectives. And if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means." (pp. 342-3)

Also see *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1 (1973), where the same principles are summarized at 16-7. Justice Stewart, concurring, added "[A] state law that impinges on a substantive right or liberty created or conferred by the Constitution is, of course, *presumptively invalid*" (at 61, emphasis supplied).

It is clear from the analysis in Part I above that fundamental constitutional rights have been asserted in this case. It is equally clear from Part II above that the Act, by requiring the use of a device which restrains bodily movement and which may also injure or kill, seriously impinges upon those rights. Accordingly, the Act must be tested by the "strict scrutiny" standard of review.

The failure of the Court of Appeals to apply the proper standard of review probably is a failure of procedural due process. The due process clause of the Fourteenth Amendment certainly affords a procedural guarantee against a deprivation of "life" or "liberty." *Kelley v. Johnson*, 425 U.S. 238, 244 (1976); and the "question concerning the burden of proof which either the individual or the government must bear" is included among other procedural safeguards involved in criminal trials or other formal judicial process. See J. NOWAK, R. ROTUNDA & J. YOUNG: CONSTITUTIONAL LAW 556 (6th Ed., 1986) [hereinafter NOWAK]. Whether strictly a matter of procedural due process or part of the "balancing test" by which due process is determined (Id. at 555) is not important, since Justice Douglas, concurring in *Roe v. Wade, supra*, at p. 213, makes it clear that:

> "These rights [freedom to care for one's health and person and freedom from bodily restraint or compulsion], though fundamental, are likewise subject to regulation *on a showing of 'compelling state interest.'* " (emphasis supplied).

Since the Trial Court failed to apply the proper standard of review and the Court of Appeals affirmed, regardless of this Court's views on the two other questions presented, this case should be simmarily reversed and remanded with instructions that the strict scrutiny standard of review be applied.

Part V. The Act Violates the Due Process Clause

The Standard, an excerpt of the pertinent portion of which is included in Appendix E, was amended in July, 1984, to provide in substance that, until states having two-thirds of the total population of the United States and the District of Columbia, have enacted mandatory seatbelt usage laws which, in the opinion of the DOT, satisfy specified criteria, each automobile manufacturer will be required to install passive restraints (*i.e.*, airbags or "automatic" seatbelts which will function without any action by the occupant) in cars as follows: in at least 10% of the cars produced after September 1, 1986, and before September 1, 1987; in at least 25% of the cars produced during the next twelve months; in at least 40% of the cars produced during the next twelve months (ending September 1, 1989); and in 100% of all cars produced thereafter unless, on or before April 1, 1989, the DOT determines that satisfactory mandatory seatbelt use laws had been adopted by the required number of states.

Automobile manufacturers lost no time in expressing their preference for the ordinary, manually-operated seatbelts. They formed an organization, adopted a 14-million dollar budget, and began to mobilize lobbyists and organize coalitions to seek mandatory seatbelt use laws in all fifty states. By October, 1985, sixteen states had enacted such laws, but it was clear that many of them did not satisfy the DOT criteria. See J. Seamands: *Seat-Belt Laws Aren't Deflating Those Air Bags*, U.S. News & World Report, Oct. 21, 1985, p. 55.

The Act is the Texas version of the DOT-mandated seatbelt use law. It became effective on September 1, 1985, but violations of the Act were not punishable until December 1, 1985. By comparing the Act (App. E) with the provisions of S4.1.5 of the Standard (App. E), it is clear that the Act was adopted as part of the manufacturers' effort to secure passage of mandatory seatbelt usage laws as outlined

above. It thus becomes apparent that the real "state interest" was, in fact, a commercial one, namely, to help the automobile manufacturers save money by continuing to install manually-operated seatbelts. This commercial effort failed (see Part II of Appendix F), with the result that constitutional rights were frittered away for no legitimate public purpose.

The commercial character of the Act is confirmed by *four* of its provisions. First, the Act mandates the use of an *inferior device*. Air bags are clearly the first choice of the DOT, and the manufacturers challenge this view only by complaining that the cost is too high. If really motivated by a desire to protect or benefit citizens of the state, would not the Texas Legislature have opted for the best device available? Second, the Act expressly provides that the use or non-use of a seatbelt is not admissible evidence in a civil trial (and thereby violates the DOT criteria specified in the Standard). See Sec. 107C(j) of the Act. Also see L. Schwartz: *The Seat Belt Defense and Mandatory Seat Belt Usage: Law, Ethics, and Economics*, 24 Idaho L.R. 273, 290 (1988), in which the author argues that "a more just and efficient" way to encourage the use of seatbelts is to make the plaintiff bear the loss due to failure to wear the belt; and P. Barrett: *Failure to Wear Seat Belts Can Cut Crash-Suit Awards*, Wall Street Journal, Oct. 27, 1988, p. B1, col. 5-6 (Sw. Ed.). Third, the Act provides in substance that a person can violate the law every day of the year and never become an "habitual violator" of the traffic law, one of the grounds for suspension of his driver's license. See Section 3 of the Act. Finally, if the Act were really intended to benefit or protect citizens of the state, why limit the fine to a maximum of $50? See Sec. 107(C)(e). Would not compliance with and enforcement of the Act be substantially enhanced if the fine were larger? Perhaps escalating with multiple offenses?

Absent a compelling state interest, it is clear that the Act violates the due process clause of the Fourteenth Amendment for it is *presumed* to be invalid unless such interest is established. If we assume, for the sake of argument, that the State of Texas had some legitimate public purpose in adopting the Act which amounted to a compelling state interest, the Act is still invalid.

First of all, the State selected manually operated seatbelts which restrain bodily movement, instead of air

bags, a clearly available alternative which function essentially as cushions and do not restrain at all. This is contrary to the teaching of *Dunn v. Blumstein*, *supra*, at 343, that "[T]he State cannot choose means that unnecessarily burden or restrict constitutionally protected activity." Second, the Act does not reflect in any way that the State recognized there were constitutional rights involved, hence the Act totally lacks the "precision" which *Dunn v. Blumstein*, *Id.*, requires in such cases. Neither is the Act "tailored" in any way to achieve the State's legitimate objectives in a way which would respect the constitutional rights involved. To the contrary, the Act achieves the state's goal by means "which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *Griswold v. Connecticut*, *supra*, at 485. In other words, the Act is overbroad.

Except for those exempt from the operation of the Act, it mandates the use of seatbelts at *any* time, day or night, the car, large or small, is being operated, whether or not moving at *any* speed in either direction, on *any* public street or highway -- freeway, country road, metropolitan traffic artery or dead-end street -- all alike, and regardless of weather, road and traffic conditions. The unnecessarily broad reach of the Act is demonstrated by several examples. Unless exempted, one violates the Act if he is not "buckled-up" and parks a car at the curb of any public street, drives or rides in a parade or funeral procession, leaves one parking lot in a shopping center to get to another one and in the process crosses a public street, the traffic in which is regulated at the point of crossing by a police officer, drives slowly around the block in search of a child in a residential area, or drives a small pick-up truck (which is covered by the Act, see Sec. 107C(a)) any distance on the shoulder of a country road in the process of repairing a farm fence.

Appellant readily concedes, that the constitutional rights to life and liberty are not absolute. That is to say, they are subject to "due process of law." See *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and *Roe v. Wade*, *supra*, at 213. However, such principle is not reached in this case because the State totally ignored the fundamental constitutional rights involved and utterly failed to demonstrate that it was necessary to invade those rights in achieving its goal.

Circumstances considered, this Court should summarily reverse and render this case, because, without a demonstrated "compelling state interest," the presumption of the Act's unconstitutionality is not rebutted, and if any such interest can be shown, it is abundantly clear that the Act fails to satisfy the criteria articulated in *Dunn v. Blumstein, supra*, at 342-3.

The Act Violates the Equal Protection Clause

Appellant argued in the trial court and in the Court of Appeals that the Act violated the equal protection clause of the Fourteenth Amendment by exempting back seat passengers, thereby discriminating against the front seat occupants who were required to "buckle up." In view of the seatbelt injuries described in Part I of Appendix F, Appellant irrevocably abandoned this argument in the Court of Criminal Appeals, and does not urge it here.

On the other hand, as noted above, the Act also exempts postal employees while servicing "postal boxes from their vehicles" or when performing duties "which require frequent entry into and exit from their vehicles." See Section 107C(h). Obviously, this creates a special classification consisting of a limited number of government employees. Excluded from the privileged class are not only all other governmental employees, but everyone else, from delivery service personnel to the rest of us who may engage in any activity which requires us to get in and out of our cars at frequent intervals. The right of government employment is not fundamental, *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313 (1976); and government employees, as such, have no special standing under the Constitution. See NOWAK, *supra*, at 821 and 829. Postal employees are not members of any "suspect class," nor are their fundamental rights burdened any more by the Act than others who may make "frequent entry into and exit from their vehicles." Neither is the classification necessary for the State to achieve its goal. To the contrary, the classification is merely a piece of special interest legislation which cannot be sustained even under the "rational basis" standard of review, much less under the strict scrutiny standard.

Circumstances considered, this case should be summarily reversed and rendered because the Act is invalid

under the equal protection clause of the Fourteenth Amendment.

THE QUESTIONS ARE SUBSTANTIAL

The questions presented in this appeal will affect the mandatory seatbelt use laws adopted by some thirty-two other jurisdictions. In addition, the automobile and insurance industries and the DOT may also be affected. For these reasons alone, it is appropriate that the Court give this case plenary consideration.

The questions presented in this appeal are also substantial because of the importance of the constitutional rights asserted here. Indeed, it is little less than shocking that all of the courts below, during the Bicentennial years of the adoption and ratification of the Constitution of the United States, failed to understand the true significance of such rights and apply the strict scrutiny standard of review that has been so clearly articulated by this Court. The right to "life" and "liberty" under the Fourteenth Amendment (as well as the Fifth) are, more than any other, the reason we Americans revere the Magna Charta, why the American Bar Association caused a monument to be erected on the sacred ground where it was signed, why members of the bar of the highest rank return to Runnymede to rededicate that monument.

CONCLUSION

The wise counsel of Justice Brandeis is uniquely appropriate in this case: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead v. U.S.*, 277 U.S. 438, 479 (1928, dissenting). Most of those involved in the automobile safety program are undoubtedly "men of zeal" and are to be commended for their effort. However, it is clear that they have had no understanding of the fundamental constitutional rights at risk here and their paramount importance. Accordingly, the questions presented are so substantial that plenary consideration is required.

Respectfully submitted,

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No. 88-_____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

On Appeal From The Court of Appeals
For The First Supreme Judicial District
Houston, Texas

Appendix To Jurisdictional Statement

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December 22, 1988

APPENDIX A

Part I

Opinion

In The

Court of Appeals

For The

First Supreme Judicial District of Texas

NO. 01-86-00780-CR

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

On Appeal from the
County Criminal Court at Law No. 11
Harris County, Texas
Trial Court Cause No. 906,325

The primary issue in this case is the constitutionality of the Texas seat belt law. Appellant was convicted of violating the seat belt law by a municipal court, and appealed the conviction to a Harris County criminal court at law. The county criminal court at law also found him guilty, assessing a $35.00 fine and costs. On appeal to this Court, appellant asserts that Tex. Rev. Civ. Stat. Ann. art. 6701d, sec. 107(c) (Vernon Supp. 1987) (the "Act") violates the due process and the equal protection clauses of the Texas and United States Constitution. U.S. Const. amend. XIV; Tex. Const. art. I, secs. 3 and 19.

Appellant admitted to operating a motor vehicle on a public street without wearing a safety belt on June 14, 1986. However, he pleaded not guilty to the charge of violating the Act because he felt that the Act was unconstitutional.

In his first two points of error, appellant contends that the court failed to apply the correct standard of review as to the constitutionality of the Act, and to hold that the Act violated the due process clauses in the Texas and the United States Constitutions. U.S. Const. amend. XIV; Tex. Const. art. I, secs. 3 and 19. Specifically, he contends that the Act violates his fundamental right to be free from bodily restraint.

Freedom from bodily restraint arises from the Constitution's protection of liberty. The liberty interest that is protected is not merely freedom from bodily restraint, but also includes the right of the individual to contract, to engage in other common occupations of life, and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men. *Peacock v. Board of Regents of Univ. and State Colleges of Arizona*, 380 F.Supp. 1081 (D. Ariz. 1974), *aff'd*, 510 F.2d 1324 (9th Cir.), *cert. denied* 422 U.S. 1049 (1975). The Constitution:

> speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interest of the commmunity is due process.

West Coast Hotel Co. v. Parrish, 300 U.S. 379, 391 (1936). In other words, the liberty guaranteed by the 14th amendment implies absence of arbitrary interferences, but not

immunity from reasonable regulations. *Gere v. Stanley*, 453 F.2d 205, 209 (3d Cir. 1971).

Due process requires a balancing of interests between the parties. When interests of an individual reach a level of a fundamental or a constitutionally protected right, then the legislation must be strictly scrutinized. *San Antonio Indep. School Dist. v. Rodriguez*, 441 U.S. 1, 17 (1973). If, however, a statutory inhibition does not implicate some personal constitutional protection, its validity is determined by the rational basis test. *Lindsey v. Normet*, 405 U.S. 56 (1972); *Williams v. State*, 588 S.W.2d 593, 596 n. 4 (Tex. Crim. App. 1979). "That is, the law will be upheld if it bears a rational relation to a legitimate legislative purpose and is neither arbitrary nor discriminatory." *Williamson v. Lee Optical*, 348 U.S. 483, 487-88 (1955); see also Alobaidi v. State, 433 S.W.2d 440 (Tex. Crim. App.), *cert. denied*, 393 U.S. 943 (1968).

Appellant has cited no cases that specifically support his contention that freedom from restraint by a seat belt in an automobile is a fundamental or constitutionally protected right. In fact, cases show that states are allowed great leeway in regulating their public roads and highways. *See Bibb v. Navaho Freight Lines, Inc.*, 359 U.S. 520, 530 (1959) (court held power of the states to regulate their highways to be broad and pervasive); *Ex parte Smith*, 441 S.W.2d 544 (Tex. Crim. App. 1969) (court upheld Texas statute requiring motorcyclist to wear protective head gear, stating "it is clearly within the State's police power to regulate ... in the interest of public safety and welfare"); *People v. Kohrig*, 498 N.E.2d 1158 (Ill. 1986) (court upheld constitutionality of seat belt law, holding that it does not infringe on fundamental right to privacy protected by 14th amendment); *Wells v. State*, 130 Misc.2d 113, 495 N.Y.S.2d 591 (N.Y. Sup. Ct. 1985) (court held that seat belt law was not unconstitutional on the grounds that it exceeded police power or violated equal protection).

In considering the constitutionality of the Texas mandatory seat belt law, it is not the function of the courts to decide whether the law is desirable or necessary. The issue is "not what the legislature should do but what the legislature can do." *See City of Wichita v. White*, 205 Kan. 408, 409, 469 P.2d 287, 288 (1970).

The State offered evidence by an expert witness to show that the purpose of the Act was to reduce injuries and/or death in traffic accidents. The expert testified that this was a reasonable means of fulfilling the Act's purpose, and stated that there was "a significant drop in fatalities especially after the seat belt laws went into effect."

It is manifest that when there is a conflict between the liberties of an individual and the police power of the state, the courts must use a balancing test to determine the rights of the parties. If the legislation involved has a rational relationship to a legitimate state interest, then it is justified. In the present case, there is evidence that the Texas seat belt law serves the public safety and welfare by enhancing a driver's ability to maintain control of his vehicle, and by reducing injuries not only to himself, but also to others, all of which directly affects the state's economic welfare.

Appellant complains that because the Act does not make it mandatory for back seat passengers of an automobile to wear a seat belt, that it is inconsistent with the aims of the legislature in reducing injuries, thereby making the Act unconstitutional. It is not necessary that an act be logically consistent in all respects to be constitutional. As stated in *Williamson v. Lee Optical*, 348 U.S. at 487-88:

> The law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.

We conclude that the Act bears a rational relationship to the legitimate legislative purpose of reducing injuries and/or fatalities in traffic accidents. We also conclude that the Texas legislature had a legitimate interest in limiting appellant's constitutional right to liberty when it enacted the Texas seat belt law. We further conclude that the Act was drawn to express only the legitimate interest at stake.

We find nothing in the record before this Court that indicates that the trial court used an improper standard of review in determining the constitutionality of the Act.

Appellant's points of error one and two are overruled.

In his final point of error, appellant complains that the court erred in failing to hold the Act unconstitutional under the equal protection clauses of the Texas and United States Constitutions. U.S. Const. amend. XIV; Tex. Const. art. I, sec. 3. He contends that the Act discriminates between passengers in the front seat and those in the rear seat, and that it discriminates between postal employees and all other individuals.

The classifications created by the statute are not based on race, alienage, age, or nationality. Therefore, the rational basis test is used to determine whether the varied treatment of separate classifications "rests on grounds wholly irrelevant to the achievement of the state's objective." *McGowan v. Maryland, 366 U.S. 420, 425 (1961). "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." Id.* at 426. "When a state regulates a problem it is not under any obligation to regulate all phases of it or every class of acts or actors involved in it." *Williamson v. Lee Optical*, 348 U.S. at 489. "On the contrary, the state may regulate partially or one step at a time without violating the 14th [a]mendment's equal protection clause." *Id.* Therefore, appellant's complaint as to the front seat and rear seat classifications is without merit.

With regard to the postal employee exemption, appellant has failed to show that he has standing to challenge this classification. When challenging the constitutionality of a statute, appellant must show it is unconstitutional as to him, not as applied to others. *Parent v. State*, 621 S.W.2d 796, 797 (Tex. Crim. App. 1981).

Appellant's point of error three is overruled.

The judgment of the trial court is affirmed.

/s/Jack Smith
Jack Smith
Justice

Justices Levy and Hoyt sitting.
Justice Levy dissenting.
Publish. Tex. R. App. P. 90.
Judgment rendered and opinion delivered December 31, 1987.

True copy attest:

/s/ Kathryn Cox
Kathryn Cox
Clerk of the Court

APPENDIX A (Continued)

Part II

Dissenting Opinion

In The

Court of Appeals

For The

First Supreme Judicial District of Texas

NO. 01-86-00780-CR

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

On Appeal from the
County Criminal Court at Law No. 11
Harris County, Texas
Trial Court Cause No. 906,325

Dissenting Opinion

I respectfully dissent from the majority's disposition of appellant's first two points of error.

My problem in dissenting is that Tex.Rev.Civ. Stat.Ann.art.6701d, §107(c) (Vernon Supp. 1987), the "seat-belt law," is, in part, both salutary and not *severely* oppressive -- indeed, the appellant complains that the only constitutional right infringed upon is his right to be free from bodily restraint. In other contexts, of course, this

freedom is of tremendous value and may even be said to constitute an *essential* ingredient in one's enjoyment of life. But I do question whether this specific regulation is "reasonable" in relation to its subject, or that, upon analysis, it is adopted in the interest of the community. This penal regulation is focused primarily *on the enforced protection by the individual of his own person,* and this is where it is oppressive. Only incidentally or collaterally is its beneficial effect intended to be imposed on the travelling public.

Here, there was no accident, no collision, no property damage, no injuries -- merely the refusal by a driver to fasten his own seat belt. It is equally as offensive to me to criminalize smoking tobacco, or watching too much television, or the failure to brush one's teeth daily, or the consumption of alcohol in the privacy of one's home. In each case, the potential transgression, though its prohibition is aimed clearly at safeguarding the health or safety of the individual, has collateral consequences for the public, of varying degree.

Logically, the "rational basis" test, invoked by the majority, is applicable *only where the anti-social conduct of the individual impinges upon the rights of another.* Only thus could the test be compatible with the primary meaning of "liberty" in a democratic society: the opportunity to swing one's arms as freely as one wishes -- without hitting anyone else's nose. "Liberty" also necessarily implies one's acceptance of the risks involved in *being* free to make mistakes, to be foolish, to err, to blunder, without being punished by the social organization unless harm is thereby inflicted on others. Clearly, the State has an obligation to teach the better and more civilized path, but democracy requires, *where possible,* the substitution of self-restraint for external restraint. I am reminded of what Mr. Justice Brandeis wrote:

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient...

Olmstead v. United States, 277 U.S. 438, 479 (1928).

In adhering to the principle that government can legitimately punish behavior only when it inflicts harm on

another, but *not* when it is self-harmful or merely unwise, I echo the view expressed by both Louis D. Brandeis and John Stuart Mill. Brandeis evaluated "the right to be let alone" as "the right most valued by civilized men" in *Olmstead v. United States*, 277 U.S. at 478. This statement is, perhaps, but a compendious version of John Stuart Mill's political discourse "On Liberty," in which he wrote, in 1859,

> The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.... The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.... The only part of the conduct of anyone for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

Because I am afraid that if we uphold the authority of the State to punish one's failure to use a seat-belt, we are one more step on our way to an Orwellian society in which the State can punish merely for smoking cigarettes, for not brushing one's teeth, or for being foolish, I must dissent.

/s/ Ben G. Levy
Ben G. Levy
Justice

APPENDIX B

Part I

NO. 141-88

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

Petition for Discretionary Review from the First Court of Appeals [Harris]

Dissenting Opinion

I respectfully dissent to this Court refusing to grant the petition for discretionary review that has been filed by Raymond Duane Richards, an attorney of this State who represents himself pro se in this proceeding, henceforth appellant, in which appellant asserts that the Texas seat belt law, see Art. 6701d, X 107 (c), V.A.C.C.P., which proscribes one operating or riding in the front seat of a passenger car upon a road, street, or highway of this State unless he is then strapped inside of the vehicle by a safety belt, is unconstitutional.1/

1/ I believe that it is important to point out that the statute does not cover everyone who happens to be riding in a passenger type motor vehicle. For example, excluded are employees of the United States Postal Service if they are then acting in the course of their employment and such requires them frequent entry into and exit from their vehicles. Persons who sit in the backseat of the motor vehicle are also not covered by the act.

The Act, in pertinent part, at the time appellant was first tried and convicted in a Municipal Court of Harris County, provided:

> "(a) In this section, 'passenger car' includes a truck with a manufacturer's rated carrying capacity of not more than 1,500 pounds.
>
> (b) A person commits an offense if the person:

(Footnote 1 is continued on next page)

The record reflects that a Department of Public Safety Trooper testified in this cause, in the capacity as an "expert" to the validity of the seat belt law. The Trooper's testimony makes it clear to me that when members of the Department of Public Safety observe a motorist not being strapped in his vehicle by a seat belt, they do not intend to merely stop the driver, issue him a ticket, and send him on his merry way. Of course, if a "peace officer" sees a violation of the seat belt law occurring, under this Court's decisions, he will have probable cause to stop the motor vehicle, arrest the driver, and thereafter "strip search" the motor vehicle from bumper to bumper. See, for example, *Williams v. State*, 726 S.W.2d 99 (Tex.Cr.App.1986) (Held, a person who violates Art. 6701d, X 96 (a), V.A.C.S., by parking his motor vehicle on the wrong side of the street, subjects himself and his vehicle to a full scale and complete warrantless search of both his person and his vehicle by the arresting officer.) A person who violates the seat belt law would, of course, be no better off than a person who was arrested for parking his motor vehicle on the wrong side of the street. My research has not yet revealed a case where a motorist who parked in front of an unexpired parking meter, thus violating a municipal ordinance, was arrested, and both his person and his motor vehicle were "strip searched". However, it appears to me that in light of such cases as *Williams*, supra, a majority of this Court would uphold such a warrantless arrest and search.

(Footnote Continued)

(1) is at least 15 years old;
(2) is riding in the front seat of a passenger car while the car is being operated on a road, street, or highway of this state;
(3) is occupying a seat that is equipped with a safety belt; and
(4) is not secured by a safety belt.

(c) A person commits an offense if the person:
(1) operates on a road, street, or highway of this state a passenger car that is equipped with safety belts: and
(2) allows a child who is at least four years old but less than 15 years old to ride in the front seat of the car without requiring the child to be secured by a safety belt.

(d) A passenger car or a seat in a passenger car is deemed to be equipped with a safety belt if the passenger car is required under Section 139E of this Act to be equipped with safety belts.

(e) An offense under this section is punishable by a fine of not less than $25 nor more than $50.

(Footnote continued on next page)

The record reflects that the Department of Public Safety Trooper who testified in this cause, who the court of appeals characterized as an "expert" on the seat belt law, was selected by the Department of Public Safety to be one its "Educators." The record makes it clear to me however that the Trooper is qualified, not to testify on the validity of the seat belt law, or the legal merits or demerits thereof, but, instead, is merely qualified to speak to individuals and give them his personal preference viewpoint and the Department of Public Safety's viewpoint as to why one should be strapped inside of a motor vehicle when either driving the motor vehicle or riding in same. Of course, given the fact that the Trooper testified that his employer has a personal preference for being strapped inside of a motor vehicle one would hardly expect him to personally prefer that persons not be restrained in their motor vehicles by seat belts. Thus, his "expert" opinion views are certainly not those of an impartial, objective "expert".

However, when the Trooper testified, for support of his views, and those of his employer, he relied totally upon a book of statistics prepared by none other than his employer, the Department of Public Safety, which book of statistics, as far as I can determine, was not in the record of appeal when the case was before the court of appeals. It is also not in the record before this Court.

(Footnote Continued)

(f) This section does not apply to a person who possesses a written statement from a licensed physician stating that for medical reasons the person is unable to wear a safety belt.

(g) It is a defense to prosecution under this section that the person presents to the court, not later than the 10th day after the day of the offense, a statement from a licensed physician stating that for medical reasons the person is unable to wear a safety belt.

(h) This section does not apply to persons employed by the United States Postal Service while performing duties for that federal agency which require the the operator to service postal boxes from their vehicles or which require frequent entry into and exit from their vehicles.

(i) The department shall develop and implement an educational program to encourage the wearing of safety belts. The program shall emphasize:

(1) The effectiveness of safety belts and other restraint devices in reducing the risk of harm to passengers in motor vehicles; and

(Footnote continued on next page)

I find that almost any intelligent lay person who favors one being strapped inside of a motor vehicle is as qualified as the State's "expert" witness was to express an opinion on the validity or the merits of wearing such a device while operating or riding in the front seat of an automobile. Interestingly, given the testimony of the State's "expert" witness versus the amount of research the record reflects that the appellant himself has done on the subject, it appears to me that between the two appellant himself is clearly the more qualified "expert". Perhaps when appellant ceases to practice law, he can become a Department of Public Safety "Educational Expert" on the seat belt law, and give the opposing viewpoint of why the seat belt law was passed and why it might be hazardous to one's health to be strapped inside of a moving automobile.

Available printed material, on the subject of being strapped inside of a moving motor vehicle, that is in the record, reflects or indicates that this subject has been extremely controversial for more than 15 years.

It appears to me, from available information, that what caused the original enactment of seat belt legislation was the desire of automobile manufacturers not to be required by Congress, under the National Traffic and Motor Vehicle Safety Act of 1966, or the Legislatures of the States, to install a superior safety device, "air bags", in its motor vehicles, but instead to see that the much cheaper "optional" seat belt legislation passed. Automobile manufacturers were given a choice: Install either seat belts or air bags in their automobiles. Available information informs us that automobile manufacturers of this Nation spent approximately $14,000,000.00 on lobbyists to see that the requirement that air bags be installed in motor vehicles not be enacted into legislation. By taking this route, rather than lobbying the Legislatures of this Nation, including Texas, to require the installation of "air bags" in all newly manufactured motor vehicles, the automobile manufacturers of this Nation unquestionably saved themselves millions, if not billions, of dollars. Thus, in light

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(Footnote Continued)

(2) the requirements of this section and the penalty for noncompliance.

(j) Use or nonuse of a safety belt is not admissible evidence in a civil trial.

In this information, we deceive ourselves if we believe that "seat belt" laws were enacted to protect drivers and passengers of motor vehicles by the best means available. Simply put, "seat belt" legislation was enacted not to save lives or prevent injury but instead was enacted only to save automobile manufacturers money by letting them install seat belts rather than air bags in newly manufactured automobiles.

In filing this dissenting opinion, I acknowledge that there are probably few persons in this State, except perhaps such persons as Justice Levy, myself, and the automobile manufacturers, who concern themselves with the subject of the constitutionality of the Texas seat belt law, see Art. 6701d, X 107 (c), V.A.C.S., which might appear to be an innocuous piece of legislation. However, given what has happened in the past to many citizens of countries as a result of innocuous appearing legislation being enacted, such as we have here, which innocuous appearing legislation many of the citizens of those countries were soon made to realize through their enforcement was not only terribly offensive but often deathly, any right thinking citizen of this State should be concerned over the constitutionality of our seat belt law because the Texas seat belt law is one of those innocuous appearing laws. As previously pointed out, it is a law that can easily be used by law enforcement persons to cause much misery to many drivers and passengers of motor vehicles of this State. Today, this Court is given the opportunity to consider and determine the constitutionality of the Texas "seat belt" law. Instead, it declines to grant appellant's petition for discretionary review; thus giving its implicit approval to the holding by the court of appeals that the statute is in all things constitutional.

Perhaps, however, appellant's efforts will not be in vain. Maybe someday in the future a leading spokesperson of this State will look back and admire the war that Raymond Duane Richards, Jr., waged to have the Texas seat belt law declared unconstitutional, and recommend to the Legislature of this State that a monument be erected on the Capitol grounds, to be dedicated to the memory of this true advocate of the civil right to be let alone and the constitutional right of privacy.

The right to be let alone, of course, is probably the most comprehensive of all of our constitutional rights. It is certainly one of the most valued rights that most civilized men and women cherish. See *Olmstead v. United States*, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed.2d 944 (1929) (Brandeis, J., dissenting opinion). Unfortunately, this Court today puts this right on the back burner.

Justice Levy of the Houston First Court of Appeals, in the dissenting opinion that he filed on New Year's Eve of 1987 in this cause, when it was pending in that court, see *Richards v. State*, 743 S.W.2d 747, 750 (Tex.App.-1st 1987), eloquently expressed therein, in his own inimitable style, his concerns about the Texas "seat belt" law in the following way: "I am afraid that if we uphold the authority of the State to punish one's failure to use a seat-belt, we are one more step on our way to an Orwellian society in which the State can punish merely for smoking cigarettes, for not brushing one's teeth, *or for [just] being foolish*." (My emphasis.).

Justice Levy's Brethren on the First Court of Appeals ignored his concerns. A majority of the court of appeals merely held, inter alia: "In the present case, there is evidence that the Texas seat belt law serves the public safety and welfare by enhancing a driver's ability to maintain control of his vehicle, and by reducing injuries not only to himself, but also to others, all of which directly affects the state's economic welfare." As authority for such holding, the court of appeals relied totally upon the Trooper's testimony, which testimony was based solely on a book of statistics that his employer, the Department of Public Safety, prepared. Interestingly, as far as I can determine, the Trooper's book of statistics, though admitted into evidence, was never placed in the record of appeal, and is not in the record that is before this Court. The record clearly demonstrates that at no time did the Trooper correlate his "book of statistics" to any scientific data that the Texas seat belt law "serves the public safety and welfare"; in fact, the Trooper admitted as much when he testified.2/

2/ When it comes to using statistics to support some hypothesis, such as being strapped inside of a moving automobile is good for your health and welfare, Benjamin Disraeli perhaps expressed it best: "There are three kinds of lies: lies, damned lies, and statistics."

The court of appeals stated the following in its opinion: "The State offered evidence by an expert witness to showthat *the purpose of the Act* was to reduce injuries and/death in traffic accidents. (My emphasis.) The expert testified that this was a reasonable means of fulfilling the Act's proposal, and stated that there was 'a significant drop in fatalities especially after the seat belt laws went into effect.'" On what basis was this non-legislator qualified to express such a legislative opinion? On what basis was this individual, who carries around with him a book of statistics prepared and published by his employer, an expert? A clear reading of the Trooper's testimony makes it clear to me that his testimony has no more value than if one stopped an individual on the street, who had the same book of statistics, and asked him what he thought about the subject, and that individual gave his curb stone opinion on the subject. "Clearly, there is nothing to be gained by permitting a witness to proffer an opinion on a subject when any other person in the courtroom, any member of the jury, could form an opinion on the issue equally readily and with the same degree of logic as the witness." (Footnote deleted.) *Holloway v. State*, 613 S.W.2d 497, 500 (Tex.Cr.App.1981). Also see Rule 702, *Rules of Criminal Evidence*.

Justice Levy, in his dissenting opinion, also quoted from one of John Stuart Mill's works. I shall also quote from Mill, but will quote from his work entitled *Principles of Political Economy* (1848), Vol. II, at pages 560 and 561, where he made the following poignant remarks:

> There is a circle around every individual human being, which no government, be it that of one, or a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question.

Justice Harlan, in writing *Jacobsen v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358 (1905), for the Supreme Court of the United States, which was the state vaccination case, observed the following axiomatic fact:

> If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution. (Citations omitted). (363).

Given the lack of any evidence that might reflect that the seat belt law has a real substantial relation to the general public health and general public safety, the police power rationale is certainly not applicable to this case according to settled principles that the police power of a state must be held to embrace such reasonable regulations established directly by legislative enactment as will protect the *general* public health and the *general* public safety, and not just the health and safety of a few individuals. See *Gibbons v. Oqden*, 9 Wheat 1, 203, 6 L.Ed. 23, 71.

In this instance, appellant asserts that his liberty has been unlawfully restrained and his right of privacy has been unlawfully invaded because the State mandates that failure of a driver of or a passenger in a motor vehicle to wear a seat belt while inside the vehicle subjects such person to a criminal penalty; that such law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best. See and compare what the Supreme Court stated and held in *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), concerning the then Texas abortion statute.

I acknowledge that citizens of this State do not have the absolute right to be, at all times and in all circumstances, wholly freed from restraint. However, before

such restraint as here must be allowed to become effective it must first be established that such restraint is related to the general health and safety of the citizens of this State, and not to just a few persons. I acknowledge that "Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law." *Jacobson v. Massachusetts*, supra, 25 S.Ct. at 361. However, "if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Jacobson v. Massachusetts*, Id., at 363.

Justice Levy also pointed out the following in his dissenting opinion: "I do not question whether this specific regulation is 'reasonable' in relation to its subject, or that, upon analysis, it is adopted in the interest of the community. This penal regulation is focused primarily on the enforced protection by the individual of his own person, and this is where it is oppressive. Only incidentally or collaterally is its beneficial effect intended to be imposed on the travelling public." Also see "The True Meaning of the term 'liberty' in those clauses in the Federal and State constitutions which protect, 'life, liberty, and property,'" 4 *Harvard Law Review* (1890), which, although written almost 100 years ago, should be required reading of every student of constitutional law.

The seat belt law, and any other similar type legislation, is clearly antithetical to the legitimate aims of a free society in general and to American society in particular. I believe that our society has incrementally and steadily lost sight of what was once the most basic axiom of American political theory, that government is vested only with powers as the people have expressly relinquished to it in their social compact. Although it might be permissible for the Legislature to enact legislation that protects the citizenry in general, and as a whole, from undesirable consequences occasioned by the conduct of individuals or groups, I am not yet prepared to accept the idea that the public good includes protecting individuals from themselves. To approve such a concept would, I believe,

permit the government to legitimately decide not only what is good for society but also what is good for individuals, irrespective of any social interests. This, to me, is the antithesis of freedom.

It is the nature of our government and society that certain choices that must be made by individuals are personal and of no legitimate interest to the State. At a minimum, we must insist that our lawmakers not deliberately enact statutes regulating or penalizing the conduct of individuals unless evidence is first presented that might support the finding that such laws are reasonably necessary to the furtherance of the public, and not simply individual interests. By implicitly approving the holding by the court of appeals that the seat belt law is constitutional, has this Court not taken one giant step upon "the slippery slope of paternalism, treading blithely on individual liberty?" Van Lanningham, "The Making of the 1986 Florida Safety Belt Law: Issues and Insight," 14 *Florida State University Law Review* (1986), at 716.

Justice Levy mentioned in his dissenting opinion that approval of the seat belt law causes us to be "one step on our way to an Orwellian society in which the State can punish merely for smoking cigarettes, for not brushing one's teeth, or for being foolish." Will our Legislature next make it a penal offense to engage in rock climbing, hang gliding, public automobile racing, or scuba diving, each of which can surely be dangerous to one's health? Will our Legislature next pass a law that makes it penal not to wear a harness while one takes a shower in the privacy of his own residence?

Given what the Court does today, and what the court of appeals has already done, I say to George Orwell who wrote "1984", which provides a chilling view of a totalitarian society in which individualism and privacy are systematically eliminated: Orwell, be patient. The Executive Legislative, and Judicial Branches of our government are working just as fast and hard as they can to make our society like the one depicted in your book. Just give us a little more time.

For the above reasons, I respectfully dissent to this Court's approval of the Legislature's action in depriving us

of the individual right to perhaps do foolish things and make foolish choices.

Teague, Judge

En Banc

Delivered: June 8, 1988

Publish

APPENDIX B

Part II

Court of Criminal Appeals

Shuck Cover

NO. 01-86-00780-CR NO. 141-88

RAYMOND DUANE RICHARDS, JR..,
Appellant

VIOLATION OF SEATBELT LAW $35.00 FINE

HARRIS COUNTY

Filed In
Court Of Criminal Appeals
Feb 12 1988
Thomas Lowe, Clerk

_____ Motion For Rehearing is _____.

_____ 19___.

_____
Justice

STATE OF TEXAS
COUNTY OF HARRIS

I, Kathryn Cox, Clerk of the Court of Appeals, First Supreme Judicial District, Houston, Texas do hereby certify that the foregoing is a true and correct copy on file in my office.
Witness my official hand and seal of office, this
December 20, 1988

KATHRYN COX, CLERK OF COURT
First Supreme Judicial District
Houston, Harris County, Texas.
By /s/ C. McGraw Deputy

Appellant's Petition For Discretionary Review. Is Refused June 8 1988

/s/ Marvin O. Teague
Judge
Judge Teague dissents with opinion

Trial Court Co Cr Ct At Law # 11

Trial Court No. 906325

Trial Judge Jack Pickren

Disposition Aff

Date 12/31/87

Justice Smith P.C.____S X

Panel X Quarter____ En Banc____

S/F Yes

St. B Yes

Ap. B Yes

Supp. Tr. _____

Supp. B Yes

Pro Se _____

17675 B686

Disposition:

Date: Judge:

Signed: Per Curiam:

The Appellant's Motion For Rehearing On Petition For Discretionary Review Is Denied October 5 1988

/s/ M. P. Duncan
Judge

J. Teague would grant

APPENDIX C

NO. 01-86-00780-CR

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

Court of Appeals
First District of Texas

Appeal from the County Criminal Court at Law #11 Harris County. (Tr. Ct. No. 906, 325). Opinion delivered by Justice Smith, Justices Hoyt and Levy Sitting.

Copy of Judgment

"The cause came on to be heard on the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the judgment, it is ordered, adjudged, and decreed by the Court that the judgment be in all things affirmed, and that the appellant pay all costs in this behalf expended and that this decision be certified below for observance."

Panel consisting of Justices Smith, Hoyt and Levy.

Judgment entered December 31, 1987.

STATE OF TEXAS
COUNTY OF HARRIS

I, Kathryn Cox, Clerk of the Court of Appeals, First Supreme Judicial District, Houston, Texas do hereby certify that the foregoing is a true and correct copy of the original record, as appears of record in Vol. 22 Page 775 Minutes of said Court on file in my office.

Witness my official hand and seal of office, this December 2, 1988.

KATHRYN COX, CLERK OF COURT
First Supreme Judicial District
Houston, Harris County, Texas
By /s/ M Thompson Deputy

APPENDIX D

NO. 01-86-00780-CR

RAYMOND DUANE RICHARDS, JR.,
Appellant

V.

THE STATE OF TEXAS,
Appellee

**In the Court of Appeals for the
First Supreme Judicial District
Houston, Texas**

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Raymond Duane Richards, Jr., the appellant above named, hereby appeals to the Supreme Court of the United States from he final judgment of the Court of Appeals for the First Supreme Judicial District of Texas entered on December 31, 1987, affirming the judgment of conviction entered herein by the County Criminal Court at Law No. 11 of Harris County, Texas, on December 29, 1986.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257(2), which remains applicable to this case by virtue of Sec. 7 of S.592 enacted by the One Hundredth Congress of the United States on June 7, 1988, and duly signed by the President of the United States.

FILED IN
COURT OF APPEALS
HOUSTON, TEXAS

1988 OCT 24 PM 2:54

KATHRYN COX,
CLERK

/s/ Raymond Duane Richards, Jr.
Raymond Duane Richards, Jr.
(aka R. D. Richards, Jr.
Texas Bar No. 16859000)
3000 One Shell Plaza
Houston, Texas 77002-4995
(713) 229-1367
Pro Se

AFFIDAVIT OF SERVICE

The State of Texas §
§
County of Harris §

Before me, the undersigned authority, on this day personally appeared Raymond Duane Richards, Jr., who, being by me duly sworn, on his oath did depose and say that he is the Appellant in the above cause, that the only other party to such proceeding is the State of Texas, represented by the District Attorney of Harris County, Texas, and/or the Attorney General of the State of Texas, and that affiant served copies of the above and foregoing Notice of Appeal on each such representative by depositing such copies in a United States mailbox on the 24th day of October, 1988, with first-class postage prepaid and respectively addressed as follows:

Hon. John B. Holmes, Jr.
District Attorney for Harris County
201 Fannin
Houston, Texas 77002
Attention: Appellate Division

Hon. Jim Mattox
Attorney General
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711

Further affiant sayeth not.

/s/ Raymond Duane Richards, Jr.
Raymond Duane Richards, Jr.

Sworn to and subscribed before me on this the 24th day of October, 1988.

[SEAL]

/s/ Barbara Hairell
Notary Public

BARBARA HAIRELL
Notary Public, State of Texas
My Commission Expires Oct. 21, 1988

STATE OF TEXAS
COUNTY OF HARRIS

I, Kathryn Cox, Clerk of the Court of Appeals, First Supreme Judicial District, Houston, Texas do hereby certify that the foregoing is a true and correct copy on file in my office.
Witness my official hand and seal of office, this December 1, 1988.

KATHRYN COX, CLERK OF COURT
First Supreme Judicial District
Houston, Harris County, Texas.
By /s/ C. McGraw Deputy

AFFIDAVIT OF SERVICE

The State of Texas §
§
County of Harris §

Before Me, the undersigned authority, on this day personally appeared Raymond Duane Richards, Jr., who, being by me duly sworn, on his oath did depose and say that he is the Appellant in the above cause, that the only other party to such proceeding is the State of Texas, represented by the District Attorney of Harris County, Texas, and/or the Attorney General of the State of Texas, that, on December 16, 1988, affiant caused a copy of the attached Notice of Appeal to be filed in the office of Ray Hardy, District Clerk of Harris County, with the request that it be filed with the other documents on file in Cause No. 90632, in Harris County Criminal Court at Law No. 11 (such Court being possessed of a part of the record in the case being appealed), that, on December 16, 1988, a Deputy in said Clerk's office acknowledged receipt of such Notice, that a copy of such receipt is also attached hereto and that affiant served a copy of such receipt and Notice on each representative of the State of Texas by depositing copies of such documents in a United States mailbox on the 20th day of December, 1988, with first-class postage prepaid and respectively addressed as follows:

Hon. John B. Holmes, Jr.
District Attorney for Harris County
201 Fannin
Houston, Texas 77002
Attention: Appellate Division

Hon. Jim Mattox
Attorney General
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711

Further affiant sayeth not.

/s/ Raymond Duane Richards, Jr.
Raymond Duane Richards, Jr.

Sworn to and subscribed before me on this the 20th day of December, 1988.

[SEAL]

/s/ Barbara Hairell
Notary Public

My Commission Expires: _____

BARBARA HAIRELL
Notary Public, State of Texas
My Commission Expires Oct. 31, 1992

December 16, 1988

Hon. Ray Hardy
District Court Clerk
Criminal Appellate Division
Criminal Courts Building
301 San Jacinto
Houston, Texas 77000

Re: State of Texas v. Raymond Duane Richards, Jr.
Criminal Court at Law No. 11
Harris County, Texas; Cause No. 90632

Dear Sir:

Enclosed herewith is a copy of the Notice of Appeal to the Supreme Court of the United States which was filed in the Court of Appeals for the First Supreme Judicial District, Houston, Texas, in Cause No. 01-86-00780-CR, styled Raymond Duane Richards, Jr. v. The State of Texas.

This Notice is delivered pursuant to United States Supreme Court Rule 10.3 because a part of the record of the case is still in your possession, and it is requested that said Notice be filed with the other documents being held by you.

A copy of this letter is enclosed, together with a stamped, self-addressed envelope. Please sign such copy in the space provided and return the same to the writer.

Very truly yours,

/s/ R. D. Richards, Jr.
R. D. Richards, Jr.

Encl.

RECEIPT of the Notice described in the foregoing letter is hereby acknowledged on this the _____ day of December, 1988.

RECEIVED IN APPELLATE DIVISION - RAY HARDY
DISTRICT CLERK'S OFFICE
12-16-88
/s/ M. Lopez
DEPUTY

APPENDIX E

Chapter 804

S. B. No. 500

An Act

relating to requiring safety belts on certain motor vehicles and to the regulation of their use; providing a penalty; amending the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), by adding Section 107C and amending Section 139E; amending Subsection (b), Section 22, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

Section 1. Article III, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended by adding Section 107C to read as follows:

"Section 107C. WEARING SAFETY BELTS REQUIRED. (a) In this section, 'passenger car' includes a truck with a manufacturer's rated carrying capacity of not more than 1,500 pounds.

"(b) A person commits an offense if the person:

"(1) is at least 15 years old.

"(2) is riding in the front seat of a passenger car while the car is being operated on a road, street, or highway of this state;

"(3) is occupying a seat that is equipped with a safety belt; and

"(4) is not secured by a safety belt.

Footnote: Additions in text indicated by *italics*; deletions by [~~strikeouts~~]

"(1) operates on a road, street, or highway of this state a passenger car that is equipped with safety belts; and

"(c) A person commits an offense if the person;

"(2) allows a child who is at least four years old but less than 15 years old to ride in the front seat of the car without requiring the child to be secured by a safety belt.

"(d) A passenger car or a seat in a passenger car is deemed to be equipped with a safety belt if the passenger car is required under Section 139E of this Act to be equipped with safety belts.

"(e) An offense under this section is punishable by a fine of not less than $25 nor more than $50.

"(f) This section does not apply to a person who possesses a written statement from a licensed physician stating that for medical reasons the person is unable to war a safety belt.

"(g) It is a defense to prosecution under this section that the person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stated that for medical reasons the person is unable to wear a safety belt.

"(h) This section does not apply to persons employed by the United States Postal Service while performing duties for that federal agency which require the operator to service postal boxes from their vehicles or which require frequent entry into and exit from their vehicles.

"(i) The department shall develop and implement an educational program to encourage the wearing of safety belts. The program shall emphasize:

"(1) the effectiveness of safety belts and other restraint devices in reducing the risk of harm to passengers in motor vehicles; and

"(2) the requirements of this section and the penalty for noncompliance.

"(j) Use or nonuse of a safety belt is not admissible evidence in a civil trial."

Section 2. Section 139E, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 139E. *SAFETY* [~~SEAT~~] BELTS. Every motor vehicle required by Article XV *of this* [~~6701d, Uniform~~] Act [;] to be inspected shall be equipped with front *safety* [~~seat~~] belts where *safety* [~~seat~~] belt anchorages were part of the manufacturer's original equipment on the vehicle."

Section 3. Subsection (b), Section 22, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) The authority to suspend the license of any driver as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

"(1) has committed an offense for which automatic suspension of license is made upon conviction;

"(2) has been responsible as a driver for any accident resulting in death;

"(3) is an habitual reckless or negligent driver of a motor vehicle;

"(4) is an habitual violator of the traffic law.

"The term 'habitual violator' as used herein, shall mean any person with four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of this state or its political subdivisions other than a violation of:

"(A) Section 3 or 5, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes);

"(B) Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes);

"(C) Chapter 608, Acts of the 65th Legislature, Regular Session, 1977 (Article 6701d-12a, Vernon's Texas Civil Statutes);

"(D) Chapter 73, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6701d-13, Vernon's Texas Civil Statutes);

"(E) Chapter 212, Acts of the 56th Legislature, Regular Session, 1959 (Article 6701d-14, Vernon's Texas Civil Statutes);

"(F) Chapter 93, Acts of the 58th Legislature, Regular Session, 1959 (Article 6701d-15, Vernon's Texas Civil Statutes); [er]

"(G) Chapter 8, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6701d-17, Vernon's Texas Civil Statutes); *or*

"(H) Section 107C, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);[;]

"(5) is incapable to drive a motor vehicle;

"(6) has permitted an unlawful or fraudulent use of such license;

"(7) has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

"(8) has failed or refused to submit a report of any accident in which he was involved as provided in Article IV, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

"(9) has been responsible as a driver for any accident resulting in serious personal injury or serious property damage;

"(10) is the holder of a provisional license under Section 11A of this Act and has been convicted of two (2) or more moving violations committed within a period of twelve (12) months;

"(11) has not complied with the terms of a citation issued by a jurisdiction that is a member of the Nonresident Violator Compact of 1977 for a violation to which the compact applies."

Section 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1985.

(b) An offense under Section 107C, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), as added by this Act, is not punishable unless it is committed on or after December 1, 1985. For purposes of this subsection, an offense is committed before that date if any element of the offense occurs before that date.

Section 5. The importance of this legislature and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 25, 1985, by a viva-voce vote; passed the House on May 16, 1985: Yeas 79, Nays 62, four present not voting.

Approved June 15, 1985.

Effective Sept. 1, 1985, except as provided by Section 4(b).

§ 571.208 Standard No. 208; Occupant crash protection.

S1. **Scope.** This standard specifies performance requirements for the protection of vehicle occupants in crashes.

S2. **Purpose.** The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the severity of injuries, by specifying vehicle crashworthiness requirements ... and by specifying equipment requirements for active and passive restraint systems.

S3. **Application.** This standard applies to passenger cars ...

S4. **General Requirements.**

S4.1 Passenger cars.

* * * * *

S4.1.5 **Mandatory Seatbelt Use Laws.**

S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that state mandatory safety belt usage laws have been acted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 states and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3.

S4.1.5.2 The minimum criteria for state mandatory safety belt usage laws are:

(a) Require that each front seat occupant of a passenger car equipped with safety belts under Standard No. 208 has a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion.

(b) If waivers from the safety belt usage requirement are to be provided, permit them for medical reasons only.

(c) Provide for the following enforcement measures:

(1) A penalty of not less than $25.00 (which may include court costs) for each occupant of a car who violates the belt usage requirement.

(2) A provision specifying that the violation of the belt usage requirement may be used to mitigate damages with respect to any person who is involved in a passenger car accident while violating the belt usage requirement and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(3) A program to encourage compliance with the belt usage requirement.

(d) An effective date of not later than September 1, 1989.

APPENDIX F

Seatbelt Facts

Introduction

The record in this case is meager. It primarily consists of a Statement of Facts (which includes the testimony of the State's "expert" witness), a statistical publication of the Texas Department of Public Safety entitled "Motor Vehicle Traffic Accidents - 1985," and two Tables on "Motor Vehicle Accidents" from the "Statistical Abstract of the United States - 1986."

Obviously, we all have in our heads a great deal of other facts and understanding about one of life's frequent if not daily experiences. This Appendix includes the information (and its source) that has come to the Appellant's attention during the period this case has been pending concerning seatbelt injuries and the manufacturer's efforts to obtain enough mandatory use laws to avoid the installation of passive restraints.

Part I: Seatbelt Injuries

1. "The automobile seat belt in our modern day society is much like a two-edged sword. One edge may be equated with the prevention of deceleration injuries in vehicular accidents through its restraining action; the other edge, the one not usually exposed to public scrutiny, is associated with the data herein described." The author lists the damages associated with use of the lap belt and shoulder harness system as related to "fracturers of the ribs, sternum, cervical, thoracic, and lumbar vertabrae ..." which amount to about two percent of all vehicular injuries. S. Greenberg: *Seat Belts and Human Rights: An Appraisal*, 32 Journal of Forensic Sciences 158, 160, 164 (1987).

2. "The National Transportation Safety Board warned that automobile lap belts may increase the risk of serious injury or death in some crashes -- a claim that drew immediate criticism from the Transportation Department." The conclusion of said Board was "... based on a study of 26 head-on collisions involving 50 people who were wearing lap belts without shoulder harnesses." The report stated, "[I]n many cases, the lap belts induced severe to fatal injuries

that probably would not have occurred if the lap belts had not been worn.'"

L. McGinley: *Lap Belts May Increase Risk of Injury In Some Car Crashes, Safety Board Says*, Wall Street Journal,1/ Aug. 12, 1986, p. 8, col. 3 and 4. (Eastern Ed.)

3. The "window shade" devices which U.S. car manufacturers have installed in most of their cars in recent years can prove to be hazardous to life and limb. Automakers explain that they install such devices to encourage the use of seatbelts by making them more comfortable. However, "informal" crash tests performed in 1982 by the National Highway Traffic Safety Board indicated that such slack increased the severity of head injuries dramatically. Indeed, a former senior safety engineer for Volvo was quoted as saying that window-shade devices "kill the basic performance of the belt," and the Insurance Institute for Highway Safety has called for the elimination of such devices.

J. Emshwiller: *Seat-Belt Slack: Comfort Device In U.S. Cars Raises Safety Concern*, Wall Street Journal, July 31, 1987, p. 15, col. 4-6.

4. Four individuals, each sitting in the back seat of an automobile during an accident, and wearing a lap belt that is "standard equipment in the vast majority of U.S. cars," suffered the following results from the accident: one became a quadriplegic, two were paralyzed from the waist down, and the other is dead. Indeed, a 1986 study of 30 frontal crashes involving 139 people demonstrated that the unrestrained people fared significantly better than the lap-belted people.

J. Emshwiller: *Car Makers Face Lawsuits Alleging Real Seat Belts Aren't Safe Enough*, Wall Street Journal, Jan. 6, 1988, p. 17, col. 4-6.

5. An estimated 300 legal actions are under way in courts across the country, stemming from increased seatbelt use, most of them involving injuries allegedly caused by lap belts.

1/ Except as noted, all citations to the Wall Street Journal are to its Southwest Edition.

Seat-Belt Litigation in the Millions, Denver Post, Jan. 31, 1988, p. 6A, col. 1-3 (By the Washington Post).

6. The Department of Transportation plans to require automobile manufacturers to install shoulder harnesses for rear-seat passengers beginning with the 1990 model year.

Buckle Up! Here Comes Another Belt, Houston Post, Nov. 24, 1988, p. 1, col. 1.

7. The Institute for Injury Reduction has charged that the window-shade device installed in a vast majority of cars are poorly designed and should be eliminated, or a campaign should be commenced to warn motorists of the design flaw.

Safety Group Hits Seal Belt Design, Houston Post, Nov. 24, 1988, p. 29A, col. 1-2 (AP).

8. "Just because a person was using the seatbelt during an automobile crash is no reason to expect the the belt should have prevented injury to that person ... That is because there is no law requiring seatbelts to demonstrate this capacity in a crash at any speed. Hundreds of experimental crash tests have shown that there are major deficiencies in seatbelt design."

C. Thelin; *Seatbelts -- 80+ Percent Defective*, 10 Trial Diplomacy Journal 16 (Fall, 1987).

9. "[T]he National Highway Safety Administration has never set crash-performance standards for the belts installed in the vast majority of the 136 million cars on U.S. roads. As a result, the agency has never required that those belt systems be crash tested."

J. Emshwiller: *Federal Rules About Belts Don't Require Crash Tests*, Wall Street Journal, July 31, 1987, p. 15, col. 4-6.

10. "As more people wearing seat belts are involved in accidents, the defects of the restraint systems used in today's cars are being exposed."

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"[A] recent study conducted for the Insurance Institute for Highway Safety concluded that 35 percent of domestic car drivers who use belts have slack in their shoulder belts."

D. Slavik: *Defective Seat Belts*, 24 Trial 34 (Feb., 1988).

11. "Rear seat lap belts are defective," apparently discussing the same facts as those involved in paragraph 4 above.

Moss: *Buckled Up*, 74 ABA Journal 21 (May, 1988).

Part II: The Commercial Effort

The manufacturers' efforts to postpone the installation of passive restraints by securing the adoption of mandatory seatbelt use laws has about run its course, as evidenced by the following:

1. The number of states which have adopted such laws have been reported in several law review articles, most recently, in 14 Fla. St. U. L. R. 685 (1986), naming 26 states, and 10 Hamline L. R. 229, 233 (1987), naming 27.

2. The Insurance Institute for Highway Safety compiled a list of jurisdictions having seatbelt use laws dated February 19, 1988, which names 32 states (not counting Massachusetts and Nebraska, which repealed their laws) and the District of Columbia. The penalty for violations of such laws in 18 of the 32 states clearly do not satisfy the DOT requirement spelled out in the Standard. Satisfaction of the penalty requirement in three other states is questionable. Illinois and Texas are not among the states with deficient penalties.

3. It is clear that Illinois law, as reported in *People v. Kohrig*, 498 N.E. 2d 1158, does not satisfy the DOT requirements. Neither does the Texas law, making it clear that the Kiplinger Washington Letter was correct in advising its clients on March 4, 1988, that "Passive Restraints" will be mandatory in all new cars by '90" (p. 3).

4. The Standard itself provides that the DOT must determine, *not later than April 1, 1989*, that mandatory seatbelt use laws which satisfy the specified criteria have been adopted by the required number of jurisdictions or the option given manufacturers expires.

5. In May, 1988, Chrysler Corporation announced that it would include driver-side air bags as standard equipment in six models made this year, and would include air bags on its entire fleet in 1990. Ford announced it would include air bags as standard equipment on the 1988 Lincoln Continental. GM says it will equip several of its Cadillacs and Oldsmobiles with air bags in the next two years.

M. Sanicki: *Automakers Switch Lanes on Air Bags*, Houston Post, July 5, 1988, p. 4B, col. 1-4.

6. Tally Industries Inc. has said it will supply "inflatable air bag safety systems" for seven 1990 GM models.

R. Harris: *Talley To Supply Air Bag Systems For 7 GM Models*, Wall Street Journal, March 17, 1988, p. 14, col. 3. (Eastern Ed.)